



"Express Mail" Label No. EV 323 381 141 US

Date of Deposit : November 25, 2003

I hereby certify that this is being deposited with the United States Postal Service "Express Mail Post Office to Address" service under 37 CFR 1.10 on the date indicated above and is addressed to:

M/S Non-Fee Amendment

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

By: Don Anton

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/724,940  
Filed: November 28, 2000  
TC/AU: 1600/1647  
Examiner: Christopher J. Nichols

Confirmation No.: 9389

Docket No.: 15270J-004751US  
Customer No.: 20350

## STATEMENT UNDER MPEP § 2406.02

M/S Non-Fee Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The undersigned, Rosemarie L. Celli, attorney of record authorized to act on behalf of the Applicant and Assignee in matters relating to the subject Patent Application, does hereby declare and state that:

1. The cell line designated RB44-10D5.19.21 producing the antibody 10D5 described at e.g., the paragraph beginning on p. 68, line 17, Table 6, p. 69, and the paragraph beginning on page 83, line 14 of the above-captioned application was deposited at the American Type Culture Collection on April 8, 2003 and given accession number PTA-5129. The address

of the American Type Culture Collection (ATCC) is 10801 University Boulevard, Manassas, VA 20110-2209. The deposit was made pursuant to the provisions of the Budapest Treaty. A copy of the ATCC receipt is attached as Exhibit 1.

2. The antibody 10D5, produced by the cell line identified in paragraph 1, is also described at *e.g.*, the paragraph beginning on p. 68, line 17, Table 6, p. 69, and the paragraph beginning on page 83, line 14 of U.S. Application No. 09/580,518, filed May 26, 2000; the paragraph beginning on page 57, line 23 and at Table 6, page 58 and the paragraph beginning on page 70, line 12 of U.S. Application No. 322,289 filed May 28, 1999; the paragraph beginning at page 57, line 23 and at Table 6 p. 58 of U.S. Application No. 09/201,430, filed November 30, 1998; and, the paragraph beginning on p. 32, lines 21-31 of U.S. Application No. 60/080,970, filed April 7, 1998. The above-captioned application is a continuation of U.S. Application No. 09/580,015 filed May 26, 2000, which is a continuation-in-part of U.S. Application No. 322,289 filed May 28, 1999, which is a continuation-in-part of U.S. Application No. 09/201,430, filed November 30, 1998, which is an application claiming the benefit under 35 USC 119(e) of U.S. Application No. 60/080,970, filed April 7, 1998.

3. The cell line designated RB96 3D6.32.2.4 producing the antibody 3D6 described at *e.g.*, the paragraph beginning on page 93, line 18 and the paragraph beginning on p. 107, line 26 of the above-captioned application was deposited at the American Type Culture Collection on April 8, 2003 and given accession number PTA-5130. The address of the American Type Culture Collection (ATCC) is 10801 University Boulevard, Manassas, VA 20110-2209. The deposit was made pursuant to the provisions of the Budapest Treaty. A copy of the ATCC receipt is attached as Exhibit 1.

4. The antibody 3D6, produced by the cell line identified in paragraph 3, is also described at *e.g.*, the paragraph beginning on page 93, line 18 and the paragraph beginning on p. 107, line 26 of U.S. Application No. 09/580,518, filed May 26, 2000; the paragraph beginning on p. 107, line 26 of U.S. Application No. 322,289 filed May 28, 1999; the paragraph beginning on p. 76, line 22 of U.S. Application No. 09/201,430, filed November 30, 1998; and, the paragraph beginning on p. 27, lines 10-11 U.S. Application No. 60/080,970, filed April 7, 1998. The above-captioned application is a continuation of U.S. Application No. 09/580,015 filed May 26, 2000, which is a continuation-in-part of U.S. Application No. 322,289 filed May 28, 1999, which is a continuation-in-part of U.S. Application No. 09/201,430, filed November 30, 1998, which is an application claiming the benefit under 35 USC 119(e) of U.S. Application No. 60/080,970, filed April 7, 1998.

5. The cell lines identified in paragraphs 1 and 3 above will be maintained at the ATCC and replaced in the event of mutation, nonviability or destruction for a period of at least five (5) years after the most recent request for release of a sample was received by ATCC, for a period of at least thirty (30) years after the date of the deposit, or during the enforceable life of the related patent, whichever period is longest.

6. All restrictions, on the availability to the public of the cell lines identified in paragraphs 1 and 3 above will be irrevocably removed upon the issuance of a patent from the above-captioned application.

7. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so

SCHENK, Dale B.  
Application No. 09/724,940  
Page 4

made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: November 25, 2003      Rosemarie L. Celli  
Rosemarie L. Celli, Reg. No. 42,397

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, 8<sup>th</sup> Floor  
San Francisco, California 94111-3834  
Tel: (650) 326-2400  
Fax: (650) 326-2422  
RLC:lah  
60087494 v1

BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF  
THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

INTERNATIONAL FORM

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3  
AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.

To: (Name and Address of Depositor or Attorney)

Elan Pharmaceuticals, Inc.  
Attn: Nina Ashton  
800 Gateway Boulevard  
South San Francisco, CA 94080

Deposited on Behalf of: Elan Pharmaceuticals, Inc.

Identification Reference by Depositor:

Murine Hybridoma Cell Line: RB44-10D5.19.21  
Murine Hybridoma Cell Line: RB96 3D6.32.2.4

Patent Deposit Designation

PTA-5129  
PTA-5130

The deposits were accompanied by:    a scientific description    a proposed taxonomic description indicated above. The deposits were received April 8, 2003 by this International Depository Authority and have been accepted.

AT YOUR REQUEST:   X   We will inform you of requests for the strains for 30 years.

The strains will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the strains, and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said strains.

If the cultures should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace them with living cultures of the same.

The strains will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the cultures cited above was tested May 5, 2003. On that date, the cultures were viable.

International Depository Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:

Marie Harris  
Marie Harris, Patent Specialist, ATCC Patent Depository

Date: June 2, 2003

cc: Joe Liebeschuetz

Ref: Docket or Case No.: 15270J-004720US

Exhibit 1